

R317. Environmental Quality, Water Quality.**R317-101. Utah Wastewater Project Assistance Program.****R317-101-1. Statutory Authority.**

The authority for the Department of Environmental Quality acting through the Utah Water Quality Board to issue loans to political subdivisions to finance all or part of wastewater project costs and to enter into "credit enhancement agreements", "interest buy-down agreements", and Hardship Grants is provided in Title 73, Chapter 10b and Title 73, 10c.

R317-101-2. Definitions and Eligibility.

A. Board means Utah Water Quality Board.

B. Political Subdivision means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under the Interlocal Co-operation Act or any other entity constituting a political subdivision under the laws of Utah.

C. Wastewater Project means any sewer, sewage system, sewage treatment facility and system, lagoon, sewage collection facility and system and related pipelines and all similar systems, works and facilities necessary or desirable to collect, hold, cleanse or purify any sewage or other polluted waters of this State.

D. Project Costs include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way; engineering or architectural fees, legal fees, fiscal agent's and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the political subdivision, the Board or the Department of Environmental Quality, in connection with the issuance of obligation of the political subdivision to evidence any loan made to it under the law.

E. Wastewater Project Obligation means, as appropriate, any bond, note or other obligation of a political subdivision issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a wastewater project.

F. Credit Enhancement Agreement means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of providing methods and assistance to political subdivisions to improve the security for and marketability of wastewater project obligations.

G. Interest Buy-Down Agreement means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of reducing the cost of financing incurred by a political subdivision on bonds issued by the subdivision for project costs.

H. Financial Assistance means a project loan, credit enhancement agreement, interest buy-down agreement or hardship grant.

I. Hardship Grant means a grant of monies to a political subdivision that meets the wastewater project loan considerations whose project is determined by the Board to not be economically feasible unless grant assistance is provided. A hardship grant may be authorized in the

following forms:

1. A Planning Advance which will be required to be repaid at a later date, unless deemed otherwise by the Board, to help meet project costs incident to planning to determine the economic, engineering and financial feasibility of a proposed project.

2. A Design Advance which will be required to be repaid at a later date, to help meet project costs incident to design including, but not limited to, surveys, preparation of plans, working drawings, specifications, investigations and studies.

3. A Project Grant which will not be required to be repaid.

J. Nonpoint Source Project means any facility, system, practice, or mechanism to abate, prevent, or reduce pollution of water of this state caused by nonpoint sources.

R317-101-3. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

A. It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare an effective and appropriate financial assistance agreement, including cost effectiveness evaluations of financing methods and alternatives, for consideration by the Board.

B. A completed application form, project engineering report as appropriate, and financial capability assessment are submitted to the Board. Any comments from the local health department or association of governments should accompany the application.

C. The staff prepares an engineering and financial feasibility report on the project for presentation to the Board.

D. The Board "Authorizes" financial assistance for the project on the basis of the feasibility report prepared by the staff, designates whether a loan, credit enhancement agreement, interest buy-down agreement, hardship grant or any combination thereof, is to be entered into, and approves the project schedule (see R317-101-[10]11). The Board shall authorize a hardship grant only if it determines that other financing alternatives are unavailable or unreasonably expensive to the applicant. If the applicant seeks financial assistance in the form of a loan of amounts in the security account established pursuant to Title 73, Chapter 10c, which loan is intended to provide direct financing of projects costs, then the Board shall authorize such loan only if it determines that credit enhancement agreements, interest buy-down agreements and other financing alternatives are unavailable or unreasonably expensive to the applicant or that a loan represents the financing alternative most economically advantageous to the state and the applicant; provided, that for purposes of this paragraph and for purposes of Subsection 73-10c-4(2), the term "loan" shall not include loans issued in connection with interest buy-down agreements as described in R317-101-[8]9 hereof or in connection with any other interest buy-down arrangement.

E. Planning Advance Only - The applicant requesting a Planning Advance must attend a preapplication meeting, complete an application for a Planning Advance, prepare a plan of study, and submit a draft contract for planning services.

F. Design Advance Only - The applicant requesting a design advance must have completed an engineering plan which meets program requirements and submitted a draft contract for design services.

G. The project applicant must demonstrate public support for the project.

H. Political subdivisions which receive assistance for a wastewater project under these rules must agree to participate annually in the Municipal Wastewater Planning Program (MWPP).

I. Political subdivisions which receive assistance under these rules and which own a culinary water system must complete and submit a Water Conservation and Management Plan.

[H]J. The project applicant's engineer prepares a preliminary design report, as appropriate, outlining detailed design criteria for submission to the Board.

[F]K. Upon approval of the preliminary design report by the Board, the applicant's engineer completes the plans, specifications, and contract documents for review by the Board.

[F]L. For financial assistance mechanisms when the applicant's bond is purchased by the Board, the project applicant's bond documentation, including an opinion from legal counsel experienced in bond matters that the wastewater project obligation is a valid and binding obligation of the political subdivision, must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to Section 11-14-21. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel experienced in bond matters that the wastewater project obligation is a valid and binding obligation of the political subdivision.

[K]M. Hardship Grant - The Board executes a grant agreement setting forth the terms and conditions of the grant.

[E]N. The Board issues a Construction Permit/Plan Approval for plans and specifications and concurs in bid advertisement.

[M]O. If a project is designated to be financed by a loan or an interest buy-down agreement as described in R317-101-~~[8 and 9]~~ 9 and 10, from the Board, to cover any part of project costs an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for qualified project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement agreement as described in R317-101-~~[7]~~8 all project funds will be maintained in a separate account and a quarterly report of project expenditures will be provided to the Board.

[N]P. A Sewer Use Ordinance rate structure must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance.

[Θ]Q. A plan of operation, including adequate staffing, with an operator certified at the appropriate level in accordance with R317-10, training, and start up procedures to assure efficient operation and maintenance of the facilities, is submitted by the applicant in draft at initiation of construction and approved in final form prior to 50% of construction completion.

[P]R. An operation and maintenance (O and M) manual which provides long-term guidance for efficient facility O and M is submitted by the applicant and approved in draft and final form prior to, respectively, 50% and 90% of project construction completion.

[Q]S. The applicant's contract with its engineer must be submitted to the Board for review to determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

[R]T. The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, and adequacy of bidding and contract documents.

[S]U. Credit Enhancement Agreement and Interest Buy-Down Agreement Only - The Board issues the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and notifies the applicant to sell the bonds (see R317-101-~~[7 and 8]~~8 and 9).

[F]V. Credit Enhancement Agreement and Interest Buy-Down Agreement Only - The applicant sells the bonds on the open market and notifies the Board of the terms of sale. If a credit enhancement agreement is being utilized, the bonds sold on the open market shall contain the legend required by Subsection 73-10c-6(2)(a). If an interest buy-down agreement is being utilized, the bonds sold on the open market shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

[U]W. The applicant opens bids for the project.

[V]X. Loan Only - The Board gives final approval to purchase the bonds and execute the loan contract (see R317-101-[12]13).

[W]Y. Loan Only - The final closing of the loan is conducted.

[X]Z. The Board gives approval to award the contract to the low responsive and responsible bidder.

[Y]AA. A preconstruction conference is held.

[Z]BB. The applicant issues a written notice to proceed to the contractor.

R317-101-4. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy.

A. Water Quality Board Priority Determination

In determining the priority for financial assistance the Board shall consider:

1. The ability of the political subdivision to obtain funds for the wastewater project from other sources or to finance such project from its own resources;
2. The ability of the political subdivision to repay the loan or other project obligations;
3. Whether a good faith effort to secure all or part of the services needed from the private sector through privatization has been made; and
4. Whether the wastewater project:
 - a. Meets a critical local or state need;
 - b. Is cost effective;
 - c. Will protect against present or potential health hazards;
 - d. Is needed to comply with minimum standards of the Federal Water Pollution Control Act, Chapter 26, Title 33, United States Code, or any similar or successor statute;
 - e. Is needed to comply with the minimum standards of the Utah Water Pollution Control Act, Chapter 5, Title 19, or any similar or successor statute;
 - f. Is designed to reduce or prevent the pollution of the waters of this state;
 - g. Furthers the concept of regionalized sewer service;
5. The priority point total for the project as determined by the Board from application of the current Utah State Project Priority System (R317-100);
6. The overall financial impact of the proposed project on the citizens of the community including direct and overlapping indebtedness, tax levies, user charges, impact or connection fees, special assessments, etc., resulting from the project, and anticipated operation and maintenance costs versus the median adjusted gross household income of the community;
7. The readiness of the project to proceed;
8. Consistency with other funding source commitments that may have been obtained for the

project;

9. Other criteria that the Board may deem appropriate.

B. Water Quality Board Financial Assistance Determination. The amount and type of assistance offered will be based on the following considerations:

1. For loan consideration the estimated annual cost of sewer service to the average residential user should not exceed 1.4% of the median adjusted gross household income from the most recent available State Tax Commission records. For hardship grant consideration, exclusive of advances for planning and design, the estimated annual cost of sewer service for the average residential user should exceed 1.4% of the median adjusted gross household income from the most recent available State Tax Commission records. The Board will also consider the applicant's level of contribution to the project.

2. The estimated, average residential cost (as a percent of median adjusted gross household income) for the proposed project should be compared to the average user charge (as a percent of median adjusted gross household income) for recently constructed projects in the State of Utah.

3. Optimizing return on the security account while still allowing the project to proceed.

4. Local political and economic conditions.

5. Cost effectiveness evaluation of financing alternatives.

6. Availability of funds in the security account.

7. Environmental need.

8. Other criteria the Board may deem appropriate.

R317-101-5. Loans For Storm Water Projects

Storm water projects are eligible for funding through the Utah Wastewater Project Assistance Program, as identified in UCA 73-10c-2(12). In addition to other rules identified in R317-101 which may apply, the following particular rules apply to storm water project loans:

A. Loans will only be made to political subdivisions of the state.

B. The interest rate charged on storm water project loans will be equal to 60% of the interest rate on a 30-year U.S. Treasury bill.

C. Storm water project loans will be made twice per year. Projects will be prioritized so that the limited funds which are available are allocated first to the highest priority projects in accordance with R317-100-3 and 4, Utah State Project Priority System for the Utah Wastewater Project Assistance Program.

D. Storm water projects are eligible for funding provided a significant portion of the project is for the purpose of improving water quality.

R317-101-[5]6. Planning Advance.

A. A Planning Advance can only be made to a political subdivision which demonstrates a financial hardship which prevents the completion of project planning.

B. A Planning Advance is made to a political subdivision with the intent to provide interim financial assistance for project planning until the long-term project financing can be secured. Once the long-term project financing has been secured, the Planning Advance must be expeditiously repaid the Board.

C. The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Advance will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and Board is executed.

D. Failure on the part of the recipient of a Planning Advance to implement the construction project may authorize the Board to seek repayment of the Advance on such terms and conditions as it may determine.

E. The recipient of a Planning Advance must first receive written approval for any cost increases or changes to the scope of work.

R317-101-[6]7. Design Advance.

A. A Design Advance can only be made to a political subdivision which demonstrates a financial hardship which prevents the completion of project design.

B. A Design Advance is made to a political subdivision with the intent to provide interim financial assistance for the completion of the project design until the long-term project financing can be secured. Once the long-term project financing has been secured, the Project Design Advance must be expeditiously repaid to the Board.

C. The applicant must demonstrate that all funds necessary to complete the project design will be available prior to commencing the design effort. The Design Advance will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and Board is executed.

D. Failure on the part of the recipient of a Design Advance to implement the construction project may authorize the Board to seek repayment of the Advance on such terms and conditions as it may determine.

E. The recipient of a Design Advance must first receive written approval for any cost increases or changes to the scope of work.

R317-101-[7]8. Credit Enhancement Agreements.

The Board will determine whether a project may receive all or part of a loan, hardship grant, credit enhancement agreement or interest buy-down agreement subject to the criteria in R317-101-4. To provide security for project obligations the Board may agree to purchase project obligations of political subdivisions or make loans to the political subdivisions to prevent defaults in payments on project obligations. The Board may also consider making loans to the political subdivisions to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. In addition, the Board may consider other methods and assistance to political subdivisions to properly enhance the marketability of or security for project obligations.

R317-101-[8]9. Interest Buy-Down Agreement.

Interest buy-down agreements may consist of:

1. A financing agreement between the Board and political subdivision whereby a specified sum is loaned or granted to the political subdivision to be placed in a trust account. The trust account shall be used exclusively to reduce the cost of financing for the project.

2. A financing agreement between the Board and the political subdivision whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

3. Any other legal method of financing which reduces the annual payment amount on locally

issued bonds. After credit enhancement agreements have been evaluated by the Board and it is determined that this method is not feasible or additional assistance is required, interest buy-down agreements and loans may be considered. Once the level of financial assistance required to make the project financially feasible is determined, a cost effective evaluation of interest buy-down options and loans must be completed. The financing alternative chosen should be the one most economically advantageous for the state and the applicant.

R317-101-[9]10. Loans.

The Board may make loans to finance all or part of a wastewater project only after credit enhancement agreements and interest buy-down agreements have been evaluated and found either unavailable or unreasonably expensive. The financing alternative chosen should be the one most economically advantageous for the state and its political subdivision.

R317-101-[10]11. Project Authorization.

A project may be "Authorized" for a loan, credit enhancement agreement, interest buy-down agreement or hardship grant in writing by the Board following submission and favorable review of an application form, engineering report (if required), financial capability assessment and Staff feasibility report. The engineering report must include the preparation of a cost effective analysis of feasible project alternatives capable of meeting State and Federal water quality and public health requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal effluent and water quality or public health requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations. If it is anticipated that a project will be a candidate for financial assistance from the Board, the Staff should be contacted, and the plan of study for the engineering report (if required) should be approved before the planning is initiated.

Once the application form, plan of study, engineering report, and financial capability assessment are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include a detailed evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, interest buy-down agreement or hardship grant).

Project Authorization is not a contractual commitment and is conditioned upon the availability of funds at the time of loan closing, or signing of the credit enhancement, interest buy-down, or grant agreement and upon adherence to the project schedule approved at that time. If the project is not proceeding according to the project schedule the Board may withdraw the project Authorization so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

R317-101-[11]12. Financial Evaluations.

A. The Board considers it a proper function to assist and give direction to project applicants in obtaining funding from such State, Federal or private financing sources as may be available to achieve the most effective utilization of resources in meeting the needs of the State. This may also include joint financing arrangements with several funding agencies to complete a total project.

B. Hardship Grants will be evidenced by a grant agreement.

C. Loans will be evidenced by the sale of any legal instrument which meets the legal requirements of the Utah Municipal Bond Act (Chapter 14, Title 11) to the Board.

D. The Board will consider the financial feasibility and cost effectiveness evaluation of the project in detail. The financial capability assessment must be completed as a basis for the review. The Board will generally use these reports to determine whether a project will be Authorized to receive a loan, credit enhancement agreement, interest buy-down agreement or hardship grant (Reference R317-101-5 through 9). If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. The Board will require the applicants to repay the loan as rapidly as is reasonably consistent with the financial capability of the applicant. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

E. Normal engineering, legal and investigation costs incurred by the Department of Environmental Quality or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization. However, if the project is Authorized to receive a loan or grant of funds from the Board, all costs from the beginning of the project will be charged to the project and paid by the applicant as a part of the total project cost. If the applicant decides not to build the project after the Board has Authorized the project, all costs accruing after the Authorization will be reimbursed by the applicant to the Board.

F. The Board shall determine the date on which annual repayment will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system user one year of actual use of the project facilities before the first repayment is required.

G. The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

H. Loans and Interest Buy-Down Agreements Only - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

I. The Board will not forgive the applicant of any payment after the payment is due.

R317-101-~~[12]~~13. Committal of Funds and Approval of Agreements.

After the Board has approved the plans and specifications by the issuance of a Construction Permit/Plan Approval and has received the appropriate legal documents and other items listed in the authorization letter, the project will be considered by the Board for final approval. The Board will determine whether the project loan, interest buy-down agreement or grant agreement is in proper order on the basis of the Board's authorization. The Executive Secretary may then close the loan, credit enhancement or grant agreement if representations to the Board or other aspects of the project have not changed significantly since the Board's funding authorization, provided all conditions imposed by the Board have been met. If significant changes have occurred, the Board will then review the project and, if satisfied, will then commit funds, approve the signing of the contract, credit enhancement agreement, interest buy-down or grant agreement, and instruct the Executive Secretary to submit a copy of the signed contract agreement to the Division of Finance.

R317-101-~~[13]~~14. Construction.

The Division of Water Quality staff may conduct inspections and will report to the applicant. Contract change orders must be properly negotiated with the contractor and approved in writing.

Change orders in excess of \$10,000 must receive prior written approval by the Division of Water Quality staff before execution. Upon successful completion of the project and recommendation of the applicant's engineer, the applicant will request the Division of Water Quality to conduct a final inspection. When the project is complete to the satisfaction of the applicant's engineer, the Division of Water Quality staff and the applicant, written approval will be issued by the Executive Secretary to commence using the project facilities.

KEY: wastewater, water quality, loans, sewage treatment

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Notice of Continuation September 17, 1998